

# Rent Control

## Question

My tenant's lease expires in a couple of weeks, and I have given him notice to vacate upon its termination. He responded that *Chazal* have instituted various rules protecting tenants from eviction in situations where it is difficult for them to find new premises, and that the secular law in our jurisdiction also forbids eviction in our circumstance. Am I really barred from utilizing my property as I see fit?

## Answer

While it is true that *Halachah* forbids eviction under certain circumstances,<sup>1</sup> this does not apply to our scenario, since the lease contains an expiration date,<sup>2</sup> so the only remaining issue is whether *Halachah* considers secular rent control legislation binding between Jewish landlords and tenants. This is a question that has been heavily debated over the last century and a half, with no clear consensus emerging.<sup>3</sup> There are two *Halachic* principles that potentially call for the acceptance of the secular law:

- *dina de'malchusa dina* (DDM”D) - “the law of the [temporal] government<sup>4</sup> is the law”
- *minhag* – in monetary matters, particularly contractual ones, we usually follow the prevailing custom.

## Dina De'Malchusa Dina

The application of DDM”D to rent control legislation hinges on several major disputes among the *poskim* over the scope of the principle:

- Some *rishonim* limit the principle of DDM”D to legislation that directly concerns governmental interests, such as taxation and currency regulation, while others disagree and extend it to any legislation for the benefit of society.<sup>5</sup> It seems that DDM”D can only apply to rent control legislation under the latter view, as there is no direct governmental interest served by such

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1 *Shulchan Aruch Choshen Mishpat siman 312 seif 6.*

2 *Ibid. seif 8.*

3 *Erech Shai choshen mishpat siman 312 seif 5; Shut. Imrei Yosher chelek 2 siman 147 s.v. Ve'hinei and siman 152 os 2; Shut. Chavatzeles Ha'Sharon chelek 2 choshen mishpat siman 8; Shut. Maharshag chelek 3 siman 125; Shut. Doveiv Meisharim chelek 1 siman 76; Shut. Yaskil Avdi chelek 6 choshen mishpat siman 8; Kisvei Ha'Gaon Rav Yosef Eliyahu Henkin krach 2 (Teshuvos Ivra) pp. 174-77; Shut. Ateres Shlomo (Karelitz) even ha'ezer ve'choshen mishpat siman 88 os 5 p. 380; Shut. Igros Moshe choshen mishpat chelek 1 siman 72 and chelek 2 siman 55; Shut. Devar Yehoshua (Ehrenberg) chelek 6 siman 14; Shut. Minchas Yitzchak chelek 2 siman 86; Shut. Tzitz Eliezer chelek 5 siman 30 os 4 and chelek 10 siman 52 os 3; Shut. Ohel Yehoshua (Bombach) chelek 2 simanim 10-11; Mishpetei Shaul (Yisraeli) siman 48.*

4 Literally: “kingdom”, but the overwhelming consensus of the *poskim* is that the principle applies even (or especially!) to modern, democratic forms of government – see: *Shut. Maharam Brisk siman 85 p. 84b s.v. U'me'atah nechezei; Shut. Pe'as Sadecha siman 165; Teshuvos Ivra pp. 175-76; Sefer Ha'Maor (Preil) siman 25 p. 99; Shut Yaskil Avdi ibid. and siman 28 osios 6-8; Shut. Yechaveh Da'as chelek 5 siman 64; Dinei Mamonos (Batzi) chelek 4 sha'ar 1 perek 9 n. 10 pp. 57-62; Darchei Choshen (Silman) chelek 1 p 362; Shut. Ohel Yehoshua siman 11.*

5 See *Sefer Ha'Terumos sha'ar 46 chelek 8 os 5; Chidushei Ha'Ramban Bava Basra 55a. s.v. Ve'yesh kan; Chidushei Ha'Rashba Bava Basra ibid. s.v. U'mi'ha de'amrinan; Shut Ha'Rashba chelek 6 siman 254; Magid Mishneh Malveh Ve'Loveh beginning of perek 27; Pirush Ha'Ran Gittin 4a in Rif pagination s.v. Ve'i'bais eima; Shut. Maharik shoshen 187; Shut Mahari ibn Lev chelek 3 siman 109 p. 109a s.v. Ve'od ika plugta; Shut. Lechem Rav ibid. (beginning of the siman); Shut. Kerem Shlomo siman 31; Rema choshen mishpat siman 369. seifim 8 and 11; Shach ibid. siman 73 seif katan 39; Shut. Imrei Yosher siman 152. Shut. Doveiv Meisharim considers the restrictive view a da'as yachid.*

legislation.<sup>6</sup> Moreover, there is an opinion that even the broader standard of “societal benefit” is not met, since although the legislation benefits tenants, it does so at the expense of landlords, and so cannot be said to be for the general good of society.<sup>7</sup>

- Some *poskim* insist that in general, we ignore any law that contradicts *halachah*;<sup>8</sup> others disagree.<sup>9</sup> In the particular context of rent control, some argue that such legislation constitutes an un-*Halachic* taking of property,<sup>10</sup> particularly insofar as the law's primary supporters are “free[-thinking] representatives, who hold the doctrines and opinions of the communists and socialists, to squeeze the rich and take their money, and all these doctrines are against *da'as Torah*”.<sup>11</sup>
- There is an opinion the criterion for the application of *DDM”D* is that the law be “according to the *Torah*”, which is determined by the existence of relevant *Halachic* precedent.<sup>12</sup> Some therefore argue that since *Chazal* have already instituted certain protections against eviction, a secular law forbidding eviction (but not a law prohibiting the raising of the rent to market rates) is valid.<sup>13</sup>
- Some *poskim* suggest that even if the traditional criteria for *DDM”D* do not apply, we still accept contemporary rent control legislation, either because modern democratic governments have more *Halachic* authority than the ancient autocracies,<sup>14</sup> or because in the absence of our traditional independent communal structure, we have no choice but to recognize secular legislation.<sup>15</sup>

## Minhag

Many *poskim* maintain that regardless of the applicability of *DDM”D* to rent control legislation, insofar as the law already existed at the time of the initial contract between landlord and tenant, this creates a *minhag*, and we apply the standard rule that any agreement is presumed to incorporate the prevailing custom.<sup>16</sup>

Of the *poskim* who are skeptical toward rent control legislation, most do not raise the question of *minhag* at all, and their attitude toward the above argument is therefore unclear. There are those, however, who explicitly reject the idea of following such a *minhag*, asserting that it is not a “*minhag*

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6 See *Shut. Imrei Yosher siman 152*.

7 *Shut. Maharshag*.

8 Shach *ibid.*; *Chazon Ish ibid. os 1*.

9 Rema *ibid. siman 73 seif 14*. *Tumim ibid. seif katan 15* suggests a different understanding of Rema's ruling, but *Shut. Maharam Brisk siman 108 os 5* rejects that same interpretation of Rema.

Cf. *Shut. Kerem Shlomo* for a lengthy discussion of the basic question of *DDM”D* with regard to legislation that contradicts *halachah*. *Shut. Maharam Brisk siman 85 p. 84b s.v. Ve'henei le'chorah* argues that *Shut. Ha'Rashba meyuchasos* at the end of *siman 22* explicitly rules that secular law is valid even against *halachah*; *Shut. Teshuras Shai mahadurah tinyana siman 54* also inclines toward the view of Rema (but see also *kama siman [456] (455) s.v. U'mah she'nistapek*); *Shut. Maharam Brisk siman 108 os 2* writes that we follow the ruling of the *Teshuras Shai* even in the absence of a *sha'as ha'dechak*, “since he was the *posek acharon* of our era”; *Shut. Doveiv Meisharim s.v. Gam divrei* considers the restrictive view a *da'as yachid*, at least in situations that satisfy the criterion of *Shut. Chasam Sofer* (see note 12). Other *poskim*, however, consider this an unresolved dispute.

10 *Shut. Ateres Shlomo*; *Shut. Ohel Yehoshua siman 10*.

11 *Shut. Chavatzeles Ha'Sharon*.

12 *Shut. Chasam Sofer choshen mishpat siman 44*.

13 *Shut. Imrei Yosher siman 152*, and cf. *Shut. Doveiv Meisharim*; *Shut. Minchas Yitzchak*.

14 *Shut. Yaskil Avdi*; *Teshuvos Ivra*; *Shut. Ohel Yehoshua siman 11*; *Shut. Tzitz Eliezer chelek 5 end of siman 30*.

15 *Teshuvos Ivra*.

16 *Erech Shai*; *Shut. Tzitz Eliezer chelek 5 and chelek 10*; *Shut. Ateres Shlomo* (citing his uncle, the *Chazon Ish*); *Shut. Igros Moshe chalakim 1 and 2*; *Pischei Choshen Sechirus perek 7 n. 17 s.v. U've'zemanenu nahagu ha'batei din*.

*vasikim*”, and only exists because of the impotence of *Beis Din*.<sup>17</sup>

## **Conclusion**

There is considerable debate over whether the principle of *DDM”D* applies to rent control legislation, and while many *poskim* maintain that even if it does not, the law still creates a binding *minhag*, this, too, is not unanimously accepted, although the level of opposition to this approach is somewhat unclear.

The normal rule in the case of unresolved *Halachic* disputes is that the possessor of the property in question (*muchzak*) is entitled to retain it (*ha'motzi me'chavero alav ha'rayah*), but in our scenario, the very question of who is considered the *muchzak* is itself the subject of considerable dispute.<sup>18</sup>

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<sup>17</sup> *Shut. Chavatzeles Ha'Sharon*. [A similar position, in the context of bankruptcy law, appears in *Shut. Chikkei Lev chelek 2 choshen mishpat siman 31 p. 134b s.v. Be'ofan ki alah be'yadeinu*.] *Shut. Imrei Yosher siman 147* also dismisses out of hand the position of *Erech Shai*, but he gives no explanation, merely noting that “I have not seen nor heard at all of following *DDM”D* in this area”.

<sup>18</sup> *Shut. Imrei Yosher siman 152*; *Shut. Chavatzeles Ha'Sharon*; *Shut. Doveiv Meisharim*; *Shut. Devar Yehoshua*.